I cannot find any contract which put an end to the previous contract, and I think if the company had so contracted they would have done so without authority, for they had no right to rescind the contract for the allotment of the shares".

Of course circumstances may arise in which either a company or an applicant for shares or both may become entitled to rescind a relevant contract. But in the present case Merchant Credit were neither able nor willing to rescind the contract and I.C.R., having agreed to the deferment of the issue of the shares, were only entitled to put an end to that deferment; they were not entitled to claim the return of their application monies.

Their Lordships will allow the appeal. The order of Choor Singh J. should be restored and the respondent I.C.R. be ordered to pay the costs of the appellant Merchant Credit of the proceedings before the trial judge, the Court of Appeal in Singapore and the Board.

*Appeal allowed.*

Solicitors: *Douglas Goldberg & Co.; Norton, Rose Botterell & Roch.*

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## SINGAPORE REPORTS

### CHAN KAI KAH & ANOR. v. TAN KING KOH

**[C.A. (Kulasekaram, Lai Kew Chai & Chua JJ.) November 22, 1982]**
**[Singapore – Civil Appeal No 6 of 1982]**

*Landlord & Tenant – Claim for possession – Burden on landlord to prove premises rent-controlled – Decision of trial judge in giving judgment for the plaintiff reversed by High Court – Appeal – Appeal allowed.*

*Practice & Procedure – Trial judge dealt exhaustively with evidence – Decision of trial judge affirmed.*

The plaintiffs purchased the land and premises at No. 215-D Balestier Road. They claimed for possession of the said premises from the defendant. The defendant relied on the provision of the Control of Rent Act (Cap. 266) and claimed protection under it. The learned trial judge gave judgment for the plaintiffs. The High Court allowed the defendant's appeal (see [1982] 2 M.L.J. 141). The plaintiffs appealed against the High Court decision.

**Held**, allowing the appeal: (1) the High Court erred in holding that "the trial judge approached the whole case as if the burden of proof was on the defendant and not on the plaintiffs";

(2) the trial judge dealt exhaustively with the evidence adduced by the defendant in his grounds of decision. There was therefore no reason to interfere with the findings of the trial Judge.

*Case referred to:*

(1) *Leong Yoong* v. *Lee Sem Yoong* [1968] 2 M.L.J. 72.

COURT OF APPEAL.

*Kirpal Singh* for the appellants.

*B. Mohan Singh* for the respondent.

*Cur. Adv. Vult.*

**Chua J.** (delivering the Judgment of the Court): This appeal arises from a claim for possession by the Appellants (Plaintiffs) against the Respondent (Defendant) of the premises known as No. 215-D, Balestier Road, Singapore, (the said premises) in District Court Summons No. 1937 of 1980. The District Judge gave judgment for the Appellants for possession of the said premises. The Respondent appealed and the High Court allowed the appeal. The Appellants appealed to this court. We allowed the appeal and now give our reasons.

The Plaintiffs purchased the land and the said premises thereon on September 30, 1969.

They commenced proceedings for possession of the said premises against the Defendant. The Plaintiffs pleaded that they were not precluded by the Control of Rent Act (Cap. 266) (the Act) from recovering possession of the said premises. At the trial the Defendant claimed that the said premises were within the purview of the Act and claimed protection under it, having occupied the said premises prior to September, 1947. He abandoned all the other defences pleaded in his Defence.

One of the Defendant's grounds of appeal before the High Court was that "The learned District Judge was wrong in law and in fact in failing to consider that on the evidence adduced by the Plaintiffs, the Plaintiffs had not discharged the burden of proof, the onus of which was on the Plaintiffs, to prove that the premises were not subject to the Control of Rent Act and deciding the case on the basis that the burden of proving that the premises were within the Control of Rent Act was on the Defendant/Appellant".

The learned High Court Judge said in his judgment:–

"Now, it is well settled law that in proceedings for possession of premises it is for the Plaintiff (landlord), and not for the Defendant (tenant), to prove that the premises in respect of which possession is being sought is outside the protection of the Act, see *Dadhi Ral Yado* v. *Mukat Rai* [1958] M.L.J. 193. The Plaintiffs in the District Court called three other witnesses beside the 1st Plaintiff himself."

The learned Judge then outlined the evidence of the witnesses and continued:–

"From the evidence of all these four witnesses it seems clear to me that the Plaintiffs had not discharged their burden of proof.

It is quite apparent from a reading of the judgment of the learned trial judge that he approached the whole case as if the burden of proof was on the Defendant and not on the Plaintiffs. His whole judgment deals with the evidence adduced by the Defendant. Nowhere does he say anything about the evidence led by the Plaintiffs in the case before him.

I allowed the appeal for the reason that the learned trial judge had not addressed his mind to the question of the burden of proof in such proceedings being on the Plaintiffs (landlords) and not on the Defendant (tenant)."

It was not in dispute that the onus was on the landlords to prove that the said premises were not subject to the Act. The case of *Leong Yoong* v. *Lee Sem Yoong*[1] was cited to the trial Judge who was well aware that the burden of proof lay on the Plaintiffs.

The learned High Court Judge erred in holding that "the trial Judge approached the whole case as if the burden of proof was on the Defendant and not on the Plaintiffs."

The trial Judge had before him the evidence of:

(a) P.W. 1 – clerical officer, Property Tax Department, that the Defendant applied on the October 10, 1957, for a number to be given to the said premises and the number 215-D was given; that the application for a house number was to apply for water supply and that the said premises was first assessed for property tax on January 1, 1958.

(b) P.W. 2 – Senior clerk, Public Utilities Board, that there was a consolidated account of the said premises in the name of the Defendant for water and electricity; that the water account was opened before May 27, 1958, and that it was a non-domestic commercial account.

(c) P.W. 3, clerical officer, National Registration Office, that the first address recorded on the defendant's identity card on October 31, 1948, was 265B, Changi Road and that it was changed to 265 Changi Road on January 10, 1953; that on February 7, 1958, it was changed to the said premises and that on September 14, 1976, it was changed to Apartment Block 316, No. 1389A Avenue 1, Ang Mo Kio.

On the balance of probabilities the Plaintiffs had discharged the burden of proof which was on them that the said premises were built after September, 1947, and that the Defendant first came on to the said premises in 1957. It was then up to the Defendant to prove that he occupied the said premises prior to September, 1947, as alleged by him. This the Defendant had failed to do.

The trial Judge dealt exhaustively with the evidence adduced by the Defendant in his Grounds of Decision and he said:

"It would appear then that the story narrated by the defendant and his witnesses was conjured up solely for the purpose of showing that the premises were already in existence before September 7, 1947 and hence rent-controlled. In view of my findings on the facts and on a preponderance of evidence, I was not satisfied that the premises are subject to the provisions of the Act and that the defendant is entitled to protection thereunder. In all probabilities they were built in or before 1957 but certainly not before 1947."

We saw no reason to interfere with the findings of the trial Judge.

For these reasons we allowed the appeal.

*Appeal allowed.*

Solicitors: *Kirpal Singh & Co.; B. Mohan Singh & Co.*

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## TEO SIEW PENG v. GUOK SING ONG & ANOR.

**[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) December 1, 1982]**

**[Singapore – Civil Appeal No. 3 of 1981)**

*Land Law – Option – Specific performance of – Application refused – Purchaser did not comply with terms of option.*

*Evidence – Option – Option must be in writing – Evidence Act (Cap. 5), s. 92.*

The appellant sought for specific performance of an option in writing dated June 23, 1979 signed by the appellant and the respondents in respect of the sale and purchase of a house at No. 17, Jalan Jelita, Singapore. The High Court dismissed the claim and the appellant appealed. The appellant contended that the trial judge had erred in law in excluding the evidence of the oral agreement alleged by the appellant to have been made between the appellant and the respondents contemporaneously with the written option which oral agreement contained a material term of the bargain.

**Held:** (1) it is settled law that an option is a unilateral contract which does not become binding on the grantor of the option until the exact terms of the option are complied with;

(2) in the present case the purchaser was required to deliver the Acceptance Copy of the option together with "10% of the purchase price" to the solicitors of the grantor. This condition had not been complied with and as an option to purchase land is a "contract, grant or disposition of property" which is required by law to be in writing the purchaser is precluded by section 92 of the Evidence Act from proving that the parties had orally agreed that the $2,000 she had paid as consideration for the grant of the option could be deducted from the purchase price or from the 10% deposit she was required to pay when exercising the option.

COURT OF APPEAL.

*Cheong Yuen Hee* (*Goh Soon Hock* with him) for the appellant.

*Chim Hou Yan* for the respondents.

*Cur. Adv. Vult.*

**Chua J.** (delivering the Judgment of the Court): This appeal arises from a judgment of the High Court dismissing the claim by the Appellant (Plaintiff) against the Respondents (Defendants) under an Option in writing dated June 23, 1979, signed by the Appellant and the Respondents in respect of the sale and purchase of house situated at and known as No. 17, Jalan Jelita, Singapore, and in which the Appellant sought (a) specific performance of the said Option; (b) further, or alternatively, damages for breach of contract and (c) a declaration that the Appellant was entitled to a lien on the said property for her payment of $2,000 and any damages.

At the conclusion of the hearing of the appeal we dismissed the appeal and now give our reasons.

The facts are not in dispute. The said Option reads:–

"In consideration of the sum of Dollars two thousand only ($2,000/–) received from you, we, Guok Sing Ong and Lim An Nie of Singapore hereby make the following offer which shall remain open for acceptance in the manner hereinafter stated until 4 p.m. on July 31, 1979.

We offer to sell to you who accepts this offer in the manner hereinafter provided, the above described property upon the terms set out below. This offer may be accepted by the Purchaser signing at the bottom of this Option marked "ACCEPTANCE COPY" and delivering the same duly signed together with 10% of the purchase price to our solicitors Messrs. Guok & Co. of No. 11, D'Almeida Street, Singapore, who are authorised to acknowledge receipt of the deposit on or before 4 p.m. on July 31, 1979.

*TERMS*

1. The sale herein is subject to The Singapore (Revised) Condition of Sale but in case of any conflict the special terms herein shall prevail.

2. The title shall be properly deduced and free from encumbrances.

3. The purchase shall be completed at the office of our solicitors within 30 days from the date of acceptance or such time when the substituted duplicate certificate of title is issued.

4. The sale price shall be Dollars four hundred and twenty thousand only ($420,000/–).

5. The 10% deposit of the purchase price is irrefundable and shall be forfeited if the purchase is not completed within time.

6. The property is sold with the existing tenancy.

7. The purchase price includes fittings and furniture. The inventory to be attached to the Sale Agreement.

This Option shall expire on July 31, 1979 at 4 p.m. and shall be null and void if not exercised within the stipulated period.